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[Proposed] Attorneys for the Official Committee of
Unsecured Creditors

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
NORTHERN DIVISION

In re:
HVI CAT CANYON, INC.
Debtor.

Case No.: 19-bk-11573-MB
Chapter 11

**REPLY OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO CALIFORNIA STATE
LANDS COMMISSION'S LIMITED OBJECTION TO
THE MOTION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR AN ORDER
(I) ESTABLISHING INFORMATION SHARING
PROCEDURES AND (II) GRANTING RELATED
RELIEF**

[Relates to Docket Nos. 223 and 348]

Date: October 28, 2019
Time: 10:00 a.m.
Place: Courtroom 201
U.S. Bankruptcy Court
1415 State Street
Santa Barbara, CA 93101
Judge: Hon. Martin R. Barash

The Official Committee of Unsecured Creditors (the "Committee") appointed in the
bankruptcy case of HVI Cat Canyon, Inc. (the "Debtor"), respectfully submits the following reply to
the *California State Lands Commission's Limited Objection to the Motion of the Official Committee*

1 of Unsecured Creditors for an Order (I) Establishing Information Sharing [Docket No. 348] (the
2 “Objection”), and represents as follows:¹

3 The Committee Information Motion seeks to clarify an ambiguity in section 1102(b)(3)(A) of
4 the Bankruptcy Code, and does not, as the California State Lands Commission (the “Commission”)
5 claims, appoint the Committee as a “gatekeeper” to all information.² Indeed, bankruptcy courts in
6 the Central District of California, the Ninth Circuit, and throughout the United States routinely grant
7 the relief sought in the Committee Information Motion. *See, e.g., In re Pac Anchor Transportation*,
8 No. 17-18213 (Bankr. C.D. Cal. Sept. 20, 2017), ECF No. 81; *In re AVT Inc.*, No. 15-14464 (Bankr.
9 C.D. Cal. July 30, 2015), ECF No. 140; *In re New Meatco Provisions*, No. 13-22155 (Bankr. C.D.
10 Cal. July 23, 2013), ECF No. 200; *In re Art and Architecture Books of the 21st Century*, No. 13-
11 14135 (Bankr. C.D. Cal. May 24, 2013), ECF No. 170; *In re Rhythm and Hues, Inc.*, No. 13-13775
12 (Bankr. C.D. Cal. Apr. 2, 2013), ECF No. 191; *In re Alliance Bearing Industries*, No. 11-21831
13 (Bankr. C.D. Cal. Jan. 25, 2012), ECF No. 79; *see also In re Perkins & Marie Callender’s, LLC*, No.
14 19-11743 (Bankr. D. Del. Oct. 4, 2019), ECF No. 339; *In re iPic-Gold Class Entertainment, LLC*,
15 Case No. 19-11739 (Bankr. D. Del. Oct. 1, 2019), ECF No. 359; *In re Hollander Sleep Products*,
16 *LLC*, Case No. 19-11608 (Bankr. S.D.N.Y. July 11, 2019), ECF No. 211; *In re Mairec Precious*
17 *Metals U.S., Inc.*, Case No. 19-01198 (Bankr. D. S.C. Apr. 30, 2019), ECF No. 215; *In re Payless*
18 *Holdings LLC*, Case No. 19-40883 (Bankr. E.D. Mo. May 3, 2019), ECF No. 961; *In re Specialty*
19 *Retail Shops Holding Corp.*, Case No. 19-80064 (Bankr. D. Neb. Mar. 8, 2019), ECF No. 615.

20 The Motion is designed to address an ambiguity in the Bankruptcy Code with respect to two
21 types of information: (1) Privileged Information³ involving the Committee’s own professionals, and
22 (2) Confidential Information⁴ provided to the Committee by third parties, most notably the Debtor.

23 With respect to Privileged Information, the Commission is not wrong—the relief sought in the
24 Motion would permit the Committee to deny creditors access to Privileged Information absent a
25

26 ¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the *Motion of the Official*
27 *Committee of Unsecured Creditors for an Order (I) Establishing Information Sharing Procedures and (II) Granting*
28 *Related Relief* [ECF No. 223] (the “Motion”), as applicable.

² *See generally Motion*, at ¶¶ 8 – 11.

³ *See Motion*, at fn. 2.

⁴ *See Motion*, at fn. 1.

1 Court order. But this cannot be controversial—the Committee is entitled to the protection of the
2 attorney-client privilege. *See, e.g., In re Subpoenas Duces Tecum*, 978 F.2d 1159, 1161 (9th Cir.
3 1992); *In re Refco Inc.*, 336 B.R. 187, 197 (Bankr. S.D.N.Y. 2006); *In re Baldwin-United Corp.*, 38
4 B.R. 802, 804-05 (Bankr. S.D. Ohio 1984). To that end, the Motion asks the Court to reiterate that
5 section 1102(b)(3)(A) of the Bankruptcy Code does not require the Committee to divulge Privileged
6 Information involving the Committee’s own professionals, given that doing so may break the
7 privilege.⁵

8 With respect to Confidential Information, however, the Commission is simply wrong that the
9 relief sought in the Motion allows the Committee to “unilaterally decid[e]” who receives such
10 information. *Objection*, at 3:13. As an estate fiduciary, the Committee has received (and expects to
11 continue receiving) information designated by other parties (including the Debtor and UBS) as
12 confidential. Such information has been shared with the Committee and its professionals pursuant to
13 non-disclosure agreements between the Committee and those third parties, as is customary in both
14 bankruptcy and non-bankruptcy cases. Pursuant to such agreements, the Committee cannot simply
15 give that Confidential Information to anyone who wants it, not even if the Committee signs a
16 confidentiality agreement with the requesting party, absent agreement from the provider of the
17 Confidential Information. However, as explained in the Motion, the ambiguity in the Bankruptcy
18 Code could be read to require the Committee to share such Confidential Information with other
19 unsecured creditors, which would undoubtedly cause those third parties to stop sharing any such
20 information with the Committee and which could subject the Committee to liability under its
21 existing confidentiality agreements. *Motion*, at ¶ 10. The order sought by the Committee
22 Information Motion would merely implement administrative procedures related to the Committee’s
23 sharing of Confidential Information provided to it by third parties with other creditors.

24 The Motion does not limit the ability of any party that provides the Committee with
25 Confidential Information to also provide that information to any other unsecured creditor. In other
26

27 ⁵ The Commission suggests that an “alternative procedure that would require a requesting creditor to sign a
28 confidentiality agreement” exists. *Objection*, at 3:9. This is patently incorrect—if the Committee shares Privileged
Information with a third party (even subject to a confidentiality agreement), the attorney-client privilege could still be
broken.

1 words, a creditor can still do exactly what the Committee did prior to receiving any Confidential
2 Information—ask the third party for it, subject to any confidentiality restriction requested by that
3 party. In that regard, the Committee will no more be acting as a “gatekeeper” than any other party in
4 any other bankruptcy or non-bankruptcy case in possession of another’s Confidential Information.

5 For these reasons, the Committee urges the Court to approve the Motion and overrule the
6 Objection with prejudice.

7 Dated: October 11, 2019

PACHULSKI STANG ZIEHL & JONES LLP

8
9 By /s/ Jeffrey N. Pomerantz
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **REPLY OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO CALIFORNIA STATE LANDS COMMISSION'S LIMITED OBJECTION TO THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER (I) ESTABLISHING INFORMATION SHARING PROCEDURES AND (II) GRANTING RELATED RELIEF** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **October 11, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **October 11, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

VIA U.S. MAIL

Office of the U.S. Trustee
Brian Fittipaldi
1415 State Street, Suite 148
Santa Barbara, CA 93101

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **October 11, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA OVERNIGHT DELIVERY

Honorable Martin R. Barash
U.S. Bankruptcy Court
21041 Burbank Boulevard, Suite 342 / Courtroom 303
Woodland Hills, CA 91367-6603

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 11, 2019
Date

Nancy H. Brown
Printed Name

/s/ Nancy H. Brown
Signature

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